

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 9:23-cr-80101(s)-AMC-BER

UNITED STATES OF AMERICA

v.

DONALD J. TRUMP,
WALTINE NAUTA, and,
CARLOS DE OLIVEIRA,

Defendants.

**MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF DEFENDANT TRUMP'S MOTION TO DISMISS THE INDICTMENT
[ECF NO. 326]**

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In preparation for the scheduled oral argument, Professor Seth Barrett Tillman and the Landmark Legal Foundation (*Amici*) identified two supplemental authorities—both statements from Attorney General Merrick Garland—that support President Trump’s Motion to Dismiss the Indictment [ECF No. 326].

1. Defendant Donald Trump, *Amici* Former Attorney General Meese, et al., and *Amici* Tillman and Landmark Legal Foundation, have argued that Special Counsel Jack Smith is, at most, an “employee” of the United States.¹
2. Special Counsel Smith maintains that he is not an employee, but is instead an “Officer of the United States.”²
3. On June 4, Attorney General Merrick Garland Testified before the House Judiciary Committee. Garland, in discussing the Reno regulations, referred to Mr. Smith as “an *employee* of the Justice Department.”³ This sworn testimony is at odds with Mr. Smith’s characterization of his own position.
4. With regard to the Appropriations Clause challenge, Special Counsel Smith has argued that Congress has in fact funded his position.
5. On June 11, Attorney General Garland published an opinion editorial in *The Washington Post*.⁴ Garland contended that a congressional proposal to defund Mr. Smith’s prosecution was an “escalation of attacks that go far beyond public scrutiny, criticism, and legitimate and necessary oversight of our work. They are baseless, personal and dangerous.”

¹ Motion to Dismiss Indictment at 3 [ECF No. 326] (“Jack Smith is not an ‘Officer’ under the statutes cited by Attorney General Garland. At best, he is an *employee*.” (emphasis added)); Meese Amicus at 12–13 [ECF No. 364-1] (“In short, the position supposedly held by Smith was not ‘established by Law.’ The authority exercised by him as a so-called ‘Special Counsel’ far exceeds the power exercisable by a *mere employee*.” (emphasis added)); Tillman Amicus at 22 [ECF No. 410-2] (“Special Counsel Jack Smith was appointed to a ‘temporary’ position. Therefore, he cannot be an ‘Officer of the United States’ under the rule in *Lucia*; he is, instead, an ‘*employee* of the United States.’” (emphasis added)).

² Gov’t Response to Tillman at 4 [ECF No. 432] (“[T]he Special Counsel also qualifies as an officer under the Supreme Court’s ‘basic framework for distinguishing between officers and employees.’” (quoting *Lucia*, 585 U.S. at 245)).

³ Transcript at 22, <https://perma.cc/BFR4-2ZBZ>.

⁴ Merrick Garland, *Unfounded attacks on the Justice Department must end*, Wash. Post (June 11, 2024, 6:00 a.m. EDT), <https://www.washingtonpost.com/opinions/2024/06/11/merrick-garland-justice-department-threats-fbi-2024/> [<https://perma.cc/5VUS-MTPY>].

6. Garland's charge that Congress cannot exercise its power of the purse over Special Counsel Smith is inconsistent with Smith's position that the Special Counsel remains accountable to Congress under the Appropriations Clause.

Amici respectfully seek leave to file this notice of supplemental authority.

Date: June 18, 2024.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2024, I caused a true and correct copy of the foregoing to be served via e-mail on all parties and counsel of record in this matter and filed through Fed Ex delivery to the Clerk of Court for docketing.

/s/ Michael A. Sasso

